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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
AUGUST 25, 2008

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
KATHLEEN LOCEY
FRANCIS BEDETTI, JR.
PAT TORPEY
JAMES DITTBRENNER

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

REGULAR_MEETING

MR. KANE: I'd like to call to order the August 25,
2008 meeting of the New Windsor Zoning Board of
Appeals.

APPROVAL_OF_MINUTES_DATED_JULY_14,_2008_&_AUGUST_11,_
2008

MR. KANE: Motion to accept the minutes dated July 14,
2008 and August 11, 2008 as written.

MR. DITTBRENNER: So moved.

MR. BEDETTI: I'll second it.

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ROLL CALL

MR. DITTBRENNER AYE
MR. BEDETTI AYE

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MS. LOCEY AYE
MR. TORPEY AYE
MR. KANE AYE

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PRELIMINARY_MEETINGS:

HIGHVIEW_ESTATES_(08-27)

MR. KANE: First preliminary meeting is Highview Estates request for lot 1, 27,938 square foot minimum lot area, minimum lot width 13 feet, side yard setback 9.6 feet, lot number 2, 10,949 square feet minimum lot area, 40 square feet, all proposed 3 lot subdivision off Shaw Road. Speak loudly so the young lady can hear you, please give us your name and address for the record.

MR. REINEKE: My name is Steve Reineke, I'm the attorney for the applicant.

MR. CELLA: Jonathan Cella, engineer.

MR. REINEKE: Basically, this application is for variances on a parcel of land that historically had been before the planning board I think since 1999. The application was made under the prior zoning and then due to litigation it was put on hold for an extended period of time. When the litigation was resolved, we came back into the planning board with the original plan but at this point it does require variances in order to follow through on that. We feel that the property based upon its location and the surrounding lots does conform to the general area, the variances allow the development that was proposed back in '99 when the first application was made. That's about basically the overview on it. But questions on any of the lots or engineering the engineer is here with us. There's a house existing on what's designated as lot number 1, there's an existing home there.

MR. KANE: All the homes are going to be well and septic?

MR. CELLA: Yes.

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MR. KANE: As usual when anything of this size comes up
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definitely going to need to address the wells. And then personally going to need you to address why three homes instead of two, especially considering that lot number 1 is, you know, it's a substantial variance on the minimum lot area.

MR. BABCOCK: Mr. Chairman, lot 1 has an existing house, it's already complete.

MR. KANE: Right.

MR. BABCOCK: Just for reference.

MR. KANE: That goes with the whole property.

MR. KANE: That's correct.

MR. KANE: So if that's existing then they can split off enough property to bring that up to code.

MR. BABCOCK: That's correct.

MR. KANE: Yeah, I'd like you to address that. Cutting down substantial vegetation, removing trees in the building of this?

MR. CELLA: No.

MR. KANE: Will you be creating any water hazards or runoffs?

MR. CELLA: No.

MR. KANE: Is there any water problems to your knowledge on this particular area right now?

MR. CELLA: No.

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MR. KANE: Other questions from the board?

MR. DITTBRENNER: Was your first question answered, Mr. Chairman?

MR. KANE: That I'm asking them to on the water for the public hearing, I don't expect them to have answers for that now, this is a preliminary.

MR. BEDETTI: I have a question. Is there some reason why you can't adjust that so that they all come to code? Is it the fact that there's no more property there?

MR. CELLA: Yes, it's a total area.

MR. BEDETTI: Total area that you apparently--

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MR. CELLA: As he stated, when we first came in the zoning was around an acre and we had adequate area at that time but when you rezone you increase it to 80,000 square feet and we don't meet that.

MS. LOCEY: The proposed lot sizes are they similar to lot sizes in the area?

MR. REINEKE: Yes, we'll provide some tax map data on that so that it's easy to see for the board.

MR. KANE: Further questions from the board? Then I'll accept a motion to set up for a public hearing.

MS. LOCEY: I will offer a motion to schedule a public hearing on the application of Highland Estates of Orange County as detailed on the agenda of the Zoning Board of Appeals meeting dated August 25, 2008.

MR. TORPEY: I'll second that motion.

ROLL CALL

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MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

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MAVIS_TIRE_SUPPLY_CORP._ (08-28)

MR. KANE: Mavis Tire Supply Corporation request for west facade sign 24 feet 4 inch width, east facade sign 28 feet 2 inch width and south facade sign .5 foot height and 45 feet 4 inch width all at 366 Windsor Highway.

MR. BERG: I'm Karl Berg from DCAK Architecture and we're requesting a decrease in the allowable size of the signs. Previously I guess the 2003 signs were also permitted to be increased and we're asking for similar variance.

MR. KANE: Excuse me?

MR. BERG: We're asking for a similar variance. This original sign was 120 square feet approved in 2003,

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this was 120 square feet, we're only asking for 76 on this one and this was 80 square feet and we're asking for 63 square feet.

MR. KANE: You lost me a little bit, what do you mean this was approved in 2002? Are you replacing these signs?

MR. BERG: The previous occupant the video store had larger signs.

MR. KANE: Hollywood Video, okay.

MR. BERG: We're just asking for these signs to be allowed on the building.

MR. KANE: Signs illuminated?

MR. BERG: Yes.

MR. KANE: Internally?

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MR. BERG: Yes.

MR. KANE: Flashing?

MR. BERG: No.

MR. KANE: And the Mavis Tire the sign in the front that you want for the front 45 foot 4 inch width that's the length of the whole building?

MR. BERG: This is 55 feet, 10 feet by 2 1/2 feet is permitted so we're looking for, you know, obviously an increase from 25 to 166 square feet.

MR. KANE: Let me rephrase the question. The sign that you're showing in that picture looks like it takes up the whole front of the building, is that true?

MR. BERG: Well, it takes, it's this much right here you can see that's the facade of the building.

MR. KANE: Basically takes up the whole front of the building?

MR. BERG: It identifies the building, absolutely.

MR. KANE: You're going to need to address why that needs to be so big in the public hearing, okay?

MR. BERG: All right.

MR. KANE: Just visualizing the building and then your west and east those are for the traffic coming from 32?

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MR. BERG: Yes, I'm a little bit disoriented but this you see from the street, this is from the bank side maybe and then they don't need to be as big obviously this is really the main facade here and then there's none on the back.

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MR. TORPEY: Is the sign just the lettering or the sign's going on the side considered a sign?

MR. KANE: If that whole thing is part of a sign it's similar to what the flooring place was on 32 so the whole thing is considered a sign. Mike?

MR. BABCOCK: That's correct, we don't discount for lettering.

MR. BERG: It's not just the lettering?

MR. KANE: No.

MR. BERG: It's the whole thing.

MR. TORPEY: Whatever is green.

MR. KANE: Is that all one piece that's going up?

MR. BERG: No, it's meant to make it horizontal lines in it.

MR. KANE: But that's all part of the sign Michael?

MR. BABCOCK: Yes.

MR. BERG: They put these up separate in here, we have never, I mean, this is the first.

MR. TORPEY: If the color stopped where the M is?

MR. KANE: If it's not part of the building and it's added on to be a part of the sign then it's part of the sign, it's very simple, you know, if that lettering was just going on the building by itself then the lettering squared off would be considered your sign. That's the way they do it. If that whole portion is being added onto the building then it's part of the sign.

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MR. BERG: No, this I think we're just adjusting the elevation as it is, it's not signage.

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MR. TORPEY: Then it takes the whole entire front of the building.

MR. DITTBRENNER: Can I ask a question? Is the green or the teal color a facade background and the signage is just the lettering? Take a look at the last page of this.

MR. BABCOCK: Mr. Chairman, I can clear this up a little bit. The one on the west side, let's just go with what he says is west, I don't know that he's correct in the west but says Mavis Discount Tire. We have that sign down as 1 foot 10 high and 34 feet 4 inches long which is much smaller. It's just the letters of the sign squared, it's not the green area, it's just the M in Mavis is 1 foot 10 inches high and from the end of the start of the M to the E in Tire is 34 foot 4 inches.

MR. KANE: Hence the 24'4"?

MR. BABCOCK: That's correct.

MR. TORPEY: So that's not taking up the whole front of the building.

MR. BABCOCK: Just the letters, Mavis Tire is what we're counting as the sign.

MR. BERG: They mount these on a color similar to this background fascia.

MR. DITTBRENNER: Are they raised illuminated block letters?

MR. BERG: Yes, they are.

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MR. KANE: So the sign is just the letters?

MR. BERG: Yes.

MS. LOCEY: Currently the prior occupant of the building had a variance more substantial than the one you're asking for?

MR. BERG: They did for these two signs, this one I think they had 120 square feet and we're only asking for 46.

MR. BABCOCK: We do not go by square footage.

MR. BERG: Okay, but the total of the three is less than the three signs that they had a variance for.

MR. KANE: So it is your contention that the sign that you're going to put up or want to put up is smaller

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than what was existing there?

MR. BERG: Yes, and we're just trying to keep it within the same as was there.

MR. KANE: Okay, any further questions from the board? I'll accept a motion.

MS. LOCEY: I will offer a motion to schedule a public hearing on the application of Mavis Tire Supply Corporation as detailed on the Zoning Board of Appeals agenda dated August 25, 2008.

MR. DITTBRENNER: Second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE

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MR. KANE AYE

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PUBLIC_HEARINGS:

GEORGE_HAWKINS_(08-20)

MR. KANE: Public hearings, George Hawkins request to allow proposed detached garage closer to the road than the principal building and a variance of a 5 foot maximum building height to permit a 20 foot building at 9 Feitsma Lane in an R-1 zone.

Mr. George Hawkins appeared before the board for this proposal.

MR. KANE: Is there anybody in the audience for this particular hearing? State your name and address same as the preliminary, tell us what you want to do, speak loudly enough for that young lady to hear you.

MR. HAWKINS: My name is George Hawkins, 9 Feitsma Lane, Rock Tavern and I'm petitioning the zoning board to build a garage that's closer to the road than my home with the 20 foot height. I need an additional five foot variance for the height.

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MR. KANE: Cutting down any trees, substantial vegetation in the building of the garage?

MR. HAWKINS: No.

MR. KANE: Creating any water hazards or runoffs?

MR. HAWKINS: No.

MR. KANE: Any easements going through the area where you intend to build?

MR. HAWKINS: No.

MR. KRIEGER: If you were to locate the garage behind the house you would have to cut down trees and

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vegetation, is that correct?

MR. HAWKINS: Excuse me?

MR. KRIEGER: If you were to locate the garage behind the house you would have to cut down some trees and vegetation?

MR. HAWKINS: Well, it's not practical to put it behind the house but where I'm locating it the area's already been cleared, there's an existing driveway there.

MR. KANE: The point is where you're putting it there's less.

MR. HAWKINS: Yes, located further back so that it would be behind the house, I'd have to clear the whole section of the property.

MR. KANE: The intended garage that you have can you see that from the road?

MR. HAWKINS: Yes.

MR. KANE: How far off the road will it be?

MR. HAWKINS: Approximately, 30 feet.

MR. KANE: Won't hinder any visual aspects from driving down the road?

MR. HAWKINS: No, the property's located at the end of a dead-end road.

MR. TORPEY: Where did you hide the house?

MS. LOCEY: We can't find the house on the pictures.

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MR. HAWKINS: House is over here, my primary driveway would be right up alongside of this and the house sits

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back here.

MR. KANE: Reason for the excess height?

MR. HAWKINS: Just type of garage that I'm looking to build.

MR. KANE: At this point, I will open it up to the public and I'll ask one more time if there's anybody here for this particular hearing. Seeing as there's not, we'll close the public portion of the meeting and ask Myra how many mailings we had?

MS. MASON: On the 12th day of August, I mailed out 17 addressed envelopes and had no response.

MR. KANE: Bring it back to the board and ask the board if they have any questions?

MR. BEDETTI: I have a question, Feitsma, is that a private road?

MR. HAWKINS: It's a private road.

MR. BABCOCK: That's correct.

MR. BEDETTI: Do you have any intention for the town to take that road over?

MR. HAWKINS: I hope so but no.

MR. BABCOCK: No.

MR. BEDETTI: The reason I'm asking it's really not very far off Feitsma the 25 feet, what do you have 25 feet off the road?

MR. HAWKINS: Approximately.

MR. BEDETTI: Off the existing road and certainly that

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road did not appear to be certainly it's for town code for a road if the town were to go in and take the road by the time they get up to your house it would be wider than the existing road, whether that 25 feet that you're talking about is sufficient with a wider road in

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there.

MR. HAWKINS: Well, to my understanding that in order for the town to take over the road we'd need a turnaround at the end of the road and I guess it was, the town was approached years ago and apparently people at the end of the road did not want to give up the property to do that, therefore, I guess when the town took over all the private roads that road was not taken over.

MR. BABCOCK: Just for clarification, the private road, the easement for the private road is 30 feet. The town's requirements would be 50 feet so if for some reason they got the turnaround the town would have to take 10 feet of this guy's property, 10 feet of the neighbors which would then put his garage still 15 feet from the right-of-way, the pavement edge is still at least 10 to 12 feet from that so he would still maintain probably 20 to 25 feet from a pavement edge, private road or small road like that probably wouldn't be your 30 foot wide road.

MS. LOCEY: To the best of everyone's knowledge, there are no plans at this point for the town to take over this road?

MR. HAWKINS: I would forego the garage for the road to be taken over by the town cause I'm the only one who maintains it.

MR. BEDETTI: I drove up that road and took a look at the site, this site there and certainly when you get up, when it gets very narrow up there and I said if this is going to become a public road sometime I wasn't

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exactly sure how far off the road you were going to be.

MR. BABCOCK: The only way the town would take it is if there was a turnaround and the people that live there built the road, we're not going to build the road for them and there's some conditions with drainage and swales and curbs and whatever else they might need. If there's property in the back and I don't have a tax map well I guess there's no, there's no property.

MR. HAWKINS: The property at the back end of the road is mine, I go back another acre and a half there, it's just like I said there's no way, I can't get the people on the road to blacktop much less bring it up to code. So I think it's going to be a private road for a long time.

MR. KANE: Any further questions? I'll accept a motion.

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MS. LOCEY: Did we have any mailings?

MR. KANE: Seventeen, no response.

MR. BEDETTI: I'll make a motion that we grant George Hawkins a variance for his principal building height variance of 5 feet for 9 Feitsma Lane for detached garage closer to the road than the principal building.

MR. TORPEY: I'll second that.

MS. LOCEY: Point of order also the additional 5 foot building height.

MR. BABCOCK: That's correct.

MR. KANE: Roll call.

ROLL CALL

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MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

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DEVIN_SCHIAROLI_(08-24)

MR. KANE: Devin Schiaroli request for 25 foot rear yard setback for proposed attached pool deck at 2 Werner Court in an R-1 zone.

Mr. Devin Schiaroli appeared before the board for this proposal.

MR. KANE: Same as the preliminary, you want to state your name and address, speak loud enough for this lady to hear you.

MR. SCHIAROLI: Devin Schiaroli, 2 Werner Court, Rock Tavern. And I'm proposing a pool deck off the existing back deck of my house.

MR. KANE: Cutting down any trees, substantial vegetation in the building of the deck?

MR. SCHIAROLI: No.

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MR. KANE: Will you be creating any water hazards or runoffs?

MR. SCHIAROLI: No.

MR. KANE: Any easements going through where you want to build the deck?

MR. SCHIAROLI: No. The reason I had to place it where it is, one side I have my well line on one side and God forbid something ever happened I'd have to take down the thing to replace my well line and the opposite side is the septic tank and leach fields so I tried to wedge it in between the two.

MR. KANE: You're proposing to put the deck up is that going to make the pool safer?

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MR. SCHIAROLI: Yeah.

MR. KANE: At this point, I will ask the public if there's anybody here for this particular hearing? Seeing as there's not, we'll close the public portion of the meeting and ask Myra how many mailings we had.

MS. MASON: On the 12th day of August, I mailed out 37 addressed envelopes and had no response.

MR. KANE: The deck's going to come right off the deck from your house?

MR. SCHIAROLI: Correct.

MR. KANE: Straight to it?

MR. SCHIAROLI: Off to the side.

MR. KANE: Are they sliding, self-closing or self-latching?

MR. SCHIAROLI: Yes, they're all lockable.

MR. KANE: Self-closing, self-latching?

MR. SCHIAROLI: No.

MR. BABCOCK: We'll make sure of that.

MR. KANE: Some people have the slider that would count and you don't have to do anything on the deck.

MR. SCHIAROLI: I have to add the code for the closing door with an automatic latch.

MR. BABCOCK: And/or an alarm, there's several different ways, the pool alarms, you can also have an

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alarm on your door, they'll talk to you once you get through this.

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MR. SCHIAROLI: Yes.

MR. KANE: I have no further questions. Anything from the board? I'll accept a motion.

MR. DITTBRENNER: I move to approve a variance requested by Devin Schiaroli at 2 Werner Court regarding a rear yard setback for the proposed pool deck.

MR. TORPEY: I'll second that.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

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COWAN'S_JEWELERS_(08-21)

MR. KANE: Cowan's Jewelers.

Mr. Jeffrey Cowan appeared before the board for this proposal.

MR. KANE: Request for a variance 1 foot 6 inch height and a 4 foot width for an existing 4 foot by 14 foot wall sign at 335 Windsor Highway. You want to state your name and address, speak loudly enough for this young lady.

MR. COWAN: Jeffrey Cowan, 181 Highwood Drive, New Windsor.

MR. KANE: Tell us what you want to do, Jeff.

MR. COWAN: Looking to get 1 foot 6 inch in height 4 feet in width for an existing sign above my store. The sign has been there 33 years already, it's just more of a formality that the variance be approved.

MR. KANE: Sign illuminated in any way?

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MR. COWAN: Yes, it is.

MR. KANE: Flashing?

MR. COWAN: No.

MR. KANE: Steady illumination?

MR. COWAN: It's only we put it manually just at night.

MR. KANE: Since the sign has been in existence for 33 years, has there been any complaints about the sign formally or informally?

MR. COWAN: None.

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MR. KANE: At this point, I will ask the public if there's anybody here for this particular hearing? Seeing as there's not, we'll close the public portion, ask Myra how many mailings we had.

MS. MASON: On the 12th of August, I mailed out 55 addressed envelopes and had no response.

MR. KANE: Back to the board, any further questions? I'll accept a motion.

MR. BEDETTI: I have two questions, one is the first time Mr. Cowan was here there were actually two signs that were part of the program, one was a temporary sign located out near the road and then there was this what's called a wall sign, actually looks like a roof mount sign rather than wall sign but has the temporary sign been removed from this?

MR. KANE: It's not part of the variance request.

MR. BEDETTI: I don't know whether this was just a--

MR. KANE: No.

MR. BEDETTI: So that's no longer being considered?

MR. KANE: No longer part of the equation.

MR. BEDETTI: Now, the second question was you said the sign has been up for 33 years, in view of the fact that again looks like a roof mount sign, has, Mike, has the structural integrity of the sign been checked?

MR. BABCOCK: I don't know that we're going to check the structural integrity of it.

MR. BEDETTI: It's been up for 33 years, I guess it's

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withstood 33 years of use but just want to but, you

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know, it had never been through any formal approval now we're making a commitment that that sign's okay and my question is whether someone's going to look at the sign, make sure that--

MR. BABCOCK: We're going to look at it from the ground, we're not going to getting up there and look at it.

MR. KANE: That's not part of our equation.

MR. COWAN: Came with a hundred year guarantee, we're only a third of the way there.

MR. BEDETTI: That was the only other question I had.

MR. KANE: Any further questions?

MR. DITTBRENNER: I move we approve the variance request of Cowan's Jewelers for both height and width on the existing wall sign at 335 Windsor Highway.

MR. TORPEY: I'll second that.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

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DISCUSSION:

ED_BIAGINI_(08-13)

MR. KANE: Let me make a statement, this is a discussion only from an applicant who wants us to re-take a look or reconsider possibility of re-looking at a variance. Since this is a discussion, there's no public input on this particular meeting, so don't look to speak. You're not going to be allowed to, this is strictly an information finding thing right here and if we decide one way or the other and it could be public depending on what they have to show at this point we

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would have a public hearing again and people would be allowed to speak. Okay? Just so everybody knows what's going on. Your name again please.

MR. REINEKE: Once again, my name is Steve Reineke, I represent the property owner.

MR. CELLA: Jonathan Cella, property owner's engineer.

MR. REINEKE: This matter was before the board months ago and on a vote of 2 to 2 only 4 members were present it was, did not receive sufficient votes to get a variance. At the time of that meeting, there was some, there were a number of questions that were raised that we did not have information on such as soil conditions, wells, whether or not the lots themselves could support septic systems. And since the time of that hearing, our engineer has gone out and they have done deep tests on the property, especially in the proposed septic locations and they discovered and I will let Jonathan get into that, that the lots do all support septic, percs being less than 30 minutes on all of them. Also as a result of a well being drilled for the house that's under construction for which a building permit was obtained the well log which was filed with DEC indicates that the water table was not hit until a depth of 30 feet so that information was just not

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available to the board and just as luck would have it we did not have an full board present, there were 4 members voting as opposed to total of 5. Jonathan, maybe you can explain the deep tests and what they showed as soil conditions were a concern raised by the board.

MR. CELLA: All right, we conducted a deep test on site in the month of June on the lots 2 and number 3 and we had sufficient, the soils were sufficient to first to propose septic systems designed to the board of health standards. We have used these Elgin (phonetic) systems to reduce the size the area that they take up. As he stated, all percs were under 30 minutes and we meet all clearances for existing and proposed wells and septic systems.

MR. REINEKE: And the ground water was, they did not strike ground water to the depth of 6 feet.

MR. CELLA: Tests ranged from 4 foot to 6 foot and we didn't hit any standing ground water.

MR. KANE: What else do you have?

MR. CELLA: As he stated, we had the well drilled, as he stated, he mentioned the depth of the test well location met minimum yield requirements, the minimum

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yield requirement is 5 gallons per minute and we have, we met that.

MR. REINEKE: What is the depth on that? I think it was 400.

MR. CELLA: Test well 450 feet I believe, yeah, 450 feet and we had a yield of 5 gallons per minute.

MR. REINEKE: That's the other information that we had the soil conditions and the well test results, depth of ground water and perc tests indicate that it more than

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adequately will support septic although again as we had stated once even with the variance this does need to go back to the planning board for a subdivision review.

MR. KANE: So we have basically three choices, we can deny that anything is significantly different and wouldn't change our votes and end it right here, we can do a reconsideration on the information given us tonight and vote on it tonight or we can put it back for a new public hearing and go through the whole thing.

MR. KRIEGER: Mr. Chairman, let me just add in connection with those three choices, the question of when the chairman said deny it all the question is not would the information change your vote as an individual but might the information change somebody's vote on the board, not would it but might it, in other words, maybe not yes, it's not just you, it's anybody else.

MR. KANE: Okay.

MR. DITTBRENNER: How would I determine if I thought that was going to change somebody else's vote?

MR. KRIEGER: Well, you would have to make a determination in your own mind whether that was significant enough.

MR. DITTBRENNER: That's my decision.

MR. KRIEGER: Yeah, but the question you have to ask, you're right, it's your determination but the question you have to ask yourself is it significant enough that it might cause somebody to vote differently.

MR. TORPEY: But you would have to go back and see what the beef was about the whole thing in the first place, you would have to actually do another public hearing to go back to see what was the whole problem with the last

hearing.

MR. KRIEGER: That's of course one of the choices.

MR. TORPEY: Exactly.

MR. KRIEGER: The statute talks in terms of reconsideration or rehearing, it doesn't distinguish.

MR. TORPEY: How would we remember?

MR. KRIEGER: Well, that's a good question and as I said, if you select option 2 as the chairman has outlined which is reconsideration doesn't require a public hearing but if you select option 3 it does require a new public hearing with the attended notice and so forth.

MS. LOCEY: Could you give us a brief summary on the differences between what considerations the zoning board of appeals should be addressing as opposed to the planning board? We don't generally get into the number of gallons per minute, the perc tests, all of that and to my knowledge, I always thought that was part of a planning board thing and we're looking more at the character of the neighborhood, you know, if we think it would make a negative impact more or less and if we think it's allowable and the planning board to determine how it should go about so in this case they're talking about perc tests and they're talking about the depth of wells and how is that affecting our ZBA deliberations.

MR. KRIEGER: It is the province of the Zoning Board of Appeals to be mindful of the health, safety and welfare of the community as a general proposition. The specifics are properly a planning board function. The zoning board functions as far as determining whether there's probably sufficient water in the area not how you get it and how deep you have to drill to get it and

so forth and so if the granting the variance that's sought is going to result in damaging the health, safety and welfare of the neighbors then that's your province but beyond that not the specifics.

MR. KANE: Any other questions?

MR. BEDETTI: Yeah, back to the tests. Am I to understand that there had been no perc tests done prior to this septic you just reported on?

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MR. REINEKE: Just for the house that's under construction, tests had not been conducted on the other two proposed lots.

MR. BEDETTI: All right, there had been a test done prior to this on the one, on the lot?

MR. REINEKE: For the house, yes, it had to be done in order to obtain the building permit, septic design had to be done.

MR. BEDETTI: What were the results from that first test?

MR. CELLA: I'm not sure about it, the septic system was designed by Paul Cuomo and it was submitted to the town and we got a building permit was reviewed by the building inspector and got the permit. Based upon the length of the field I think it was probably around 10 or 15 minutes.

MS. LOCEY: So you have a large parcel of land on which you already have a building permit to construct one single family home and that all happened before you came here for a 3 lot subdivision from the Zoning Board of Appeals?

MR. REINEKE: Correct.

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MR. TORPEY: And the public input was water.

MR. REINEKE: There was wetlands and water were the questions that seemed to be the primary issues during the public hearing. That question was reiterated by members of the board and quite honestly we did not have answers for those questions.

MR. TORPEY: So the public was discussing the water problem and the well problem and that's the two things that you just addressed.

MR. REINEKE: That's correct.

MR. TORPEY: Because you didn't have them last time.

MR. REINEKE: Did not have the information when the hearing was held.

MR. DITTBRENNER: The standing water I tested between 4 and 6 feet before at 6 feet you hit standing water.

MR. CELLA: We didn't hit any in the deep hole tests which were dug by the backhoe.

MR. DITTBRENNER: How much fill was brought into the

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property? How did that affect the elevation and the topography of the parcels?

MR. BIAGINI: I can answer that cause I brought it in--

MR. REINEKE: You need to identify yourself.

MR. BIAGINI: My name is Ed Biagini, I'm the property owner. There was an area that had a hole dug in it, the prior owner had a couple of horses on the property, he dug a hole, it was about 18 inches to 24 inches deep that was filled with some standing water, refrigerators, propane tanks, we cleaned it all out and we put new material in there so it was to answer your

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question there's about a 50 foot circle and it was about two feet deep.

MR. DITTBRENNER: That's the only fill brought into the property?

MR. BIAGINI: Yes.

MS. LOCEY: In preparation of this meeting we were distributed a letter from someone regarding this application where it indicates that certain land disturbances were done and something about discharge to federal wetlands located on the property. Federal, have federal wetlands been designated?

MR. BIAGINI: There are none.

MR. CELLA: There are none, no state or federal wetlands are on the property.

MR. TORPEY: Nowhere around it?

MR. CELLA: No.

MS. LOCEY: Because reading this that would be a consideration.

MR. BIAGINI: No, there was also the town had an 18 inch pipe draining the catch basin onto the property which we extended down further passed our septic system.

MS. LOCEY: I was just concerned because there's an indication here that there were federal wetlands on the property and I wanted to get a clarification on that and so I think you have adequately answered that question.

MR. KANE: So the question comes back to the board, how do you want to handle it?

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MR. KRIEGER: One other thing if I may, I might add to allow the board members to put this in context. Because of the vote on the original application this applicant would be allowed to make a new application if he wanted to. So your vote to grant or deny basically for him short circuits that procedure but that procedure is available to him and he doesn't have to wait the six months that's specified in the statute, he can theoretically make an application at any time.

MS. LOCEY: Why is that?

MR. TORPEY: Six months are up?

MR. KRIEGER: No, the six months doesn't apply because it only applies if there's four negative votes. Now I suspect that statute may be left over from the days that there was a 7 member board but left over or not it's the statute, it's the law and it requires 4 negative votes since they weren't entitled to make a new application even if the board should deny him another rehearing or reconsideration on this application so--

MR. KANE: My personal feeling is that we should start from scratch, it should go back to the public, we should bring it back as a public hearing and a meeting and do it that way and be totally open about it. And I think that's the best way to do it. And we can hear from the neighbors in that area that have something to say so I think that's the right way to go and that's my opinion.

MR. TORPEY: This way we can hear what they say.

MR. KANE: We start from scratch, they have new information which opens that door for us to be able to do that, I think it's significant information possibility that I can change people's votes is

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definitely there in my opinion. So I think the best way to do it is to bring it back to a public hearing and start from scratch and go at it again.

MR. BIAGINI: In light of the fact that we have addressed the public concerns?

MR. KANE: That's part of it, that's the water. If you

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want to hear why I voted for it, I think three houses on that lot is not good and that has nothing to do with water.

MR. BIAGINI: Even though the lots will be larger than the existing lots in the neighborhood?

MR. KANE: The lots would conform to what New Windsor calls for now.

MR. BIAGINI: No, I understand, I'm just saying the three lots that we presented are larger than some of the lots in the neighborhood.

MR. KANE: I understand but I believe that the fair way to do it is to bring it back in front of the public and let everybody have their say and just being open about it, that's I think that's the best way to do it, you know, I believe you brought significant information, is it enough to change the way I feel about it, I'm not a hundred percent sure. I'd rather rehear everything in a public hearing and go at it that way, you know, because there's been some misinformation, federal wetlands, this kind of stuff, I think we just need to start from scratch and really go at it and bring the neighborhood in and go back at it. That's what we're here for.

MR. TORPEY: Just do one more public hearing.

MS. LOCEY: You're talking about a new public hearing and Mr. Krieger's memo item number 4 indicates to

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rehear.

MR. KANE: That's correct.

MS. LOCEY: Which would need a notice and hearing but I don't think it would be starting the new process.

MR. KRIEGER: Not starting the new process, he wouldn't have to put in a new application or attend the prelim, we're redoing the process picking up halfway through.

MS. LOCEY: That sounds better to me.

MR. KANE: How do you feel, Frank?

MR. BEDETTI: Well, I certainly feel if we do reconsider this the public has to be involved, I mean, that's my personal opinion. I'm not convinced in my mind that my vote would change from the first time around.

MR. KANE: But are you convinced that there's an iota of a possibility that it might change somebody else's

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vote?

MR. BEDETTI: That's purely speculative.

MR. KANE: Possibility, is there? Jim, how do you feel?

MR. DITTBRENNER: I wouldn't make a decision based on point number 3 at all but with them having the availability to make a new application I'm not sure that I'm comfortable in saying that these are substantial new facts and considerations to move in the direction, I would be more inclined to make a new application, go that route than set the precedence on what is substantially new information.

MS. LOCEY: I don't see the need to start from scratch,

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I think if we had a whole new public hearing--

MR. KANE: That's what I mean, have a new public hearing.

MR. KRIEGER: It isn't starting from scratch.

MS. LOCEY: It's conducting a second public hearing as a part of the application previously submitted.

MR. KANE: Everything is still the same and they present it the same, that's what I mean by start over with a public hearing.

MS. LOCEY: With the public hearing.

MR. KANE: They come in, they speak, we open up the public portion, they speak, comes back to us, same thing we do every night.

MR. BABCOCK: Just as if tonight was the preliminary and you make a motion to set up.

MS. LOCEY: I agree with that.

MR. TORPEY: Yes.

MR. KRIEGER: Rehearing, reconsideration or deny.

MS. LOCEY: I will offer a motion to rehear the application of Ed Biagini as discussed on the agenda of the Zoning Board of Appeals dated August 25, 2008.

MR. TORPEY: I'll second that motion.

ROLL CALL

MR. DITTBRENNER NO

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MR. BEDETTI	NO
MS. LOCEY	AYE

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MR. TORPEY	AYE
MR. KANE	AYE

MR. KANE: So we're going back to the public hearing. That's it for the evening, guys, thank you. Motion to adjourn.

MR. BEDETTI: So moved.

MR. DITTBRENNER: Second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

Respectfully Submitted By:

Frances Roth
Stenographer